

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

NC-DSH, LLP d/b/a DESERT SPRINGS
HOSPITAL MEDICAL CENTER,

Respondent

and

Case No.: 28-CA-127971

THERESA VAN LEER, an Individual

**RESPONDENT NC-DSH, LLP d/b/a DESERT SPRINGS
HOSPITAL MEDICAL CENTER'S
EXCEPTIONS TO THE ADMINISTRATIVE
LAW JUDGE'S DECISION ISSUED MARCH 13, 2015**

NC-DSH, LLP d/b/a Desert Springs Hospital Medical Center (Respondent), by and through its undersigned attorneys, pursuant to Section 102.46 of the Board's Rules and Regulations hereby files its Exceptions to the Decision of Administrative Law Judge Ira Sandron which issued on March 13, 2015. The specific grounds and authorities in support of the Exceptions are set forth in more detail in the accompanying brief.

1. Respondent excepts to the Administrative Law Judge's (ALJ) finding that Respondent's failure to call Dugan leads to an adverse inference. (JD at 5, ll. 21-24.)
2. Respondent excepts to the ALJ's finding that Respondent's failure to call Fulton leads to an adverse inference. (JD at 5, ll. 32-34; at 6, ll. 5-24.)
3. Respondent excepts to the ALJ's finding that management representatives Cassard, Fabiyi, and Murphy were not credible. (JD at 6, ll. 38-47; at 7, ll. 1-42; at 8, ll. 1-44; at 9, ll. 20; at 11, ll. 10-20.)

4. Respondent excepts to the ALJ's finding that Charging Party Van Leer testified credibly. (JD at 9, ll. 27-30.)

5. Respondent excepts to the ALJ's findings that Kaufmann violated Section 8(a)(1). (JD at 10, ll. 12-37.)

6. Respondent excepts to the ALJ's finding that Van Leer did not know that Fulton was at work. (JD at 11, ll 4-7.)

7. Respondent excepts to the ALJ's finding that Van Leer saw Fulton the next morning. (JD at 11, l. 22.)

8. Respondent's excepts to the ALJ's finding that the Level 3 Disciplinary Action issued to Van Leer was based solely on her March 19, 2014, conduct. (JD at 11, ll. 22-24.)

9. Respondent excepts to the ALJ's finding that Schmid prepared Joint Exhibit 5 on March 20, 2014. (JD at 11, ll. 26-27.)

10. Respondent excepts to the ALJ's finding that Fabiyi and Murphy met with Fulton in Fabiyi's office. (JD at 11, ll. 26-32.)

11. Respondent excepts to the ALJ's finding that an adverse inference should be drawn from the fact that Fabiyi did not obtain a statement from Fulton. (JD at 11, ll. 35-40; at 12, ll. 1-2.)

12. Respondent excepts to the ALJ's finding that Van Leer's testimony should be credited over that of Fabiyi regarding Van Leer's suspension pending investigation. (JD at 12, ll. 12-37; at 13, ll. 1-9.)

13. Respondent excepts to the ALJ's finding that Cassard and Fabiyi did not testify credibly regarding the issuance of the Level 3 Final Written Warning to Van Leer. (JD at 14, ll. 18-24.)

14. Respondent excepts to the ALJ's finding that credits Van Leer over Fabiyi in the April 7, 2014, disciplinary meeting. (JD at 14, ll. 27-45; at 15, ll. 1-2.)

15. Respondent excepts to the ALJ's finding that that Kaufman and McNutt violated Section 8(a)(1) of the Act during their rounding meetings. (JD at 16, ll. 9-24.)

16. Respondent excepts to the ALJ's finding that Fabiyi told Van Leer not to discuss her suspension or the investigation with coworkers. (JD at 17, ll. 33-34.)

17. Respondent excepts to the ALJ's finding that Fabiyi told Van Leer not to discuss the disciplinary action resulting from the April 8, 2014, disciplinary meeting. (JD at 18, ll. 14-16.)

18. Respondent excepts to the ALJ's finding that the sole basis for the Level 3 Disciplinary Action was the telephone call made by Van Leer to Fulton on March 19, 2014. (JD at 19, ll. 32-39.)

19. Respondent excepts to the ALJ's finding that since Van Leer was not at work at the time she placed the telephone call that it was not substantial or serious and therefore difficult to see how it interfered with discipline and order in the workplace. (JD at 20, ll. 28-34.)

20. Respondent excepts to the ALJ's finding that Van Leer's telephone call did not interfere with the workplace. (JD at 21, ll. 1-2.)

21. Respondent excepts to the ALJ's finding that Van Leer's conduct did not constitute an outburst. (JD at 21, ll. 13-15; at 22, ll. 4-5.)

22. Respondent excepts to the ALJ's finding that the *Atlantic Steel* fourth factor was inapplicable. (JD at 22, ll. 14-16.)

23. Respondent excepts to the ALJ's finding that under *Atlantic Steel* the factors weighed in favor of Van Leer. (JD at 22, ll. 18-22.)

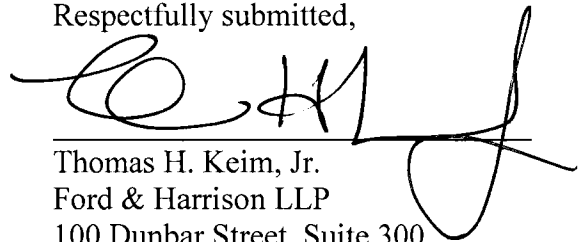
24. Respondent excepts to the ALJ's findings that animus should be inferred to the Respondent. (JD at 21, ll. 32-41; at 22, ll. 43-44; at 23, ll. 5-44.)

25. Respondent excepts to the ALJ's finding that Respondent's issuance of the Level 3 Final Written Warning to Van Leer violated the Act under Wright Line. (JD at 24, ll. 7-26.)

26. Respondent excepts to the ALJ's Conclusions of Law, Proposed Remedy, Proposed Order, and Proposed Notice in their entirety. (JD at 24, ll. 27-44; at 25, ll. 1-42; at 26, ll. 1-42, and Appendix.)

Dated this the 9th day of April, 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. H. Keim, Jr.', with a large, stylized flourish extending from the bottom right.

Thomas H. Keim, Jr.
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CERTIFICATE OF SERVICE

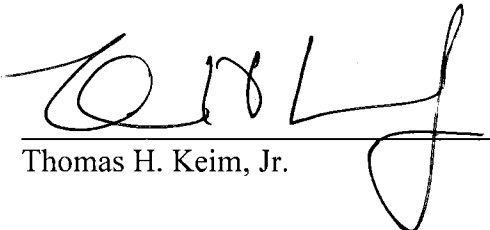
I **HEREBY CERTIFY** that an original of the foregoing was filed electronically with the National Labor Relations Board at *www.nlr.gov* on this 9th day of April, 2015, and a copy of the foregoing has been forwarded by U.S. Mail to:

Theresa Van Leer
1350 North Town Center Drive, #2070
Las Vegas, Nevada 89144

and a copy of the foregoing has been forwarded by e-mail to:

Fernando Anzaldua
Field Attorney
National Labor Relations Board, Region 28
fernando.anzaldua@nlrb.gov

This the 9th day of April, 2015.



Thomas H. Keim, Jr.